

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B. P. J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY
BOARD OF EDUCATION, WEST
VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
W. CLAYTON BURCH, in his official
Capacity as State Superintendent, DORA
STUTLER, in her official capacity as
Harrison County Superintendent, and
THE STATE OF WEST VIRGINIA,**

**CIVIL ACTION NO. 2:21-cv-00316
Judge Joseph R. Goodwin**

Defendants.

and LAINEY ARMISTEAD,

Intervenor Defendant.

**DEFENDANT STATE OF WEST VIRGINIA'S MOTION IN LIMINE TO EXCLUDE
SEVERAL LEGISLATORS' STATEMENTS (HEARSAY AND RELEVANCE)**

Defendant, State of West Virginia (the “State”), pursuant to Fed. R. Evid. 801 and 402, hereby respectfully moves for an order *in limine* to exclude certain legislators’ and others’ out-of-court statements because they are hearsay and irrelevant. Based on Plaintiff’s Memorandum in Support of Motion for Summary Judgment, the State of West Virginia expects Plaintiff to attempt to introduce statements of several state legislators and others in an effort to show that H.B. 3293 is the product of the Legislature’s animus, rather than for the legitimate reasons indicated in the law itself and further explained by the State in this case. These statements are out-of-court oral

statements, Facebook postings, or Facebook “likes.” They are hearsay without any valid exceptions. *See* Fed. R. Evid. 801. Further, they are not relevant to show the intent of the Legislature as a whole. *See* Fed. R. Evid. 402. The grounds for this Motion are more fully set forth in the Memorandum in Support below.

Therefore, the State respectfully requests that its Motion *in Limine* be granted.

Respectfully submitted,

PATRICK MORRISEY
West Virginia Attorney General

/s/ Curtis R. A. Capehart
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Chief Deputy Attorney General
Curtis R.A. Capehart (WV Bar # 9876)
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Counsel for Defendant, STATE OF WEST VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of June 2022, I electronically filed the foregoing Motion with the Clerk of Court and all parties using the CM/ECF System.

/s/ Curtis R. A. Capehart _____
Curtis R. A. Capehart